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Date of Decision: 25th January 1996

SPECIAL CIVIL APPLICATION NO. 2821 of 1988

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri P.J. Vyas, Advocate, for the Petitioners

Shri D.N. Patel, Asst. Govt. Pleader, for the Respondents

CORAM: A.N. DIVECHA, J.
(Date: 25th January 1996)

ORAL JUDGMENT

The order passed by the Competent Authority at Surat (respondent No. 2 herein) on 4th February 1984 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the Appellate Authority for convenience) on 20th November 1987 in Appeal No. Surat-690 of

1984 is under challenge in this petition under Art. 226 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioners to be in excess of the ceiling limit by 4671 square meters.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round two parcels of lands bearing Survey No. 28/2 admeasuring 2934 square meters and Survey No. 29/2 admeasuring 3237 square meters both situated at Jehangirabad in Surat (the disputed lands for convenience). They were originally owned by one Ravjibhai Nagjibhai (the deceased for convenience). He appears to have left for his heavenly abode on 13th May 1975 leaving behind him the petitioners as his heirs and legal representatives. Petitioner No.1 is the widow of the deceased and petitioner No.2 is his daughter. On coming into force of the Act, petitioner No.1 filed a declaration in the prescribed form under sec. 6(1) thereof. It was duly processed. After hearing the parties, by his order passed on 4th February 1984 under sec. 8(4) thereof, respondent No.2 came to the conclusion that the holding of the petitioners was in excess of the ceiling limit by 4671 square meters. Its copy is at Annexure A to this petition. That aggrieved petitioner No.1. She carried the matter in appeal before the Appellate Authority under sec. 33 of the Act. It came to be registered as Appeal No. Surat-690 of 1984. By his order passed on 20th November 1987 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure B to this petition. That aggrieved the petitioners. They have therefore invoked the extra-ordinary jurisdiction of this Court under Art. 226 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. As pointed out hereinabove, the deceased breathed his last some time on 13th May 1975. That was certainly prior to coming into force of the Act. As pointed out hereinabove, he was survived by the petitioners. Petitioner No.1 is his widow and petitioner No.2 is his daughter. Both of them fall in the category of heirs specified in Class I in the Schedule appended to the Hindu Succession Act, 1956. They will succeed to the disputed lands in equal share. By virtue of Sec.19 thereof, they take the disputed lands as tenants-in-common and not as joint tenants. It appears that both the authorities below have lost sight of the aforesaid statutory provisions. Petitioner No.2 is admittedly a major person and a married woman. Both the mother and the daughter would be co-owners of the disputed lands. Each of them would therefore be entitled to their separate ceiling unit in the disputed lands.

4. It is not in dispute that there exists construction of a residential unit to the tune of 41.80 square meters in the land bearing Survey No. 29/2. In view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567, the constructed property together with the land appurtenant thereto will fall outside the purview of the Act. The land appurtenant thereto in this case will be 500 square meters. In that view of the matter, an area of 541.80 square meters deserves to be excluded from the holding of the petitioners in view of the aforesaid binding ruling.

5. In view of my aforesaid discussion, I am of the opinion that both the petitioners together would be entitled to hold 3000 square meters of land as the ceiling limit for the urban agglomeration of Surat is 1500 square meters. An area of 541.80 square meters out of Survey no. 29/2 will have to be excluded from the purview of the Act. They will thus be entitled to retain in all 3541.80 square meters. The total area of the disputed lands is 6171 square meters. Deducting therefrom 3541.80 square meters, the excess land in the hands of the petitioners would be to the tune of 2629.20 square meters. This will have to be declared surplus. The impugned order at Annexure A to this petition as affirmed in appeal by the impugned order at Annexure B to this petition cannot therefore be sustained in law in toto. The area of the excess land in the hands of the petitioners deserves to be modified as stated hereinabove.

6. In the result, this petition is accepted to the aforesaid extent. The area of the excess land declared by the authorities below is modified from 4671 square meters to 2629.20 square meters. The rest of the order is maintained. The matter is remanded to the Competent Authority at Surat for his preparing the final statement according to law in the light of this judgment of mine and to declare the surplus land after giving an opportunity to the petitioners for giving their choice for the purpose. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
